

REMARKS

Claims 1-3, 5-8 and 10-19 are pending in the application. By the above amendment, claims 1-3, and 5-8 have been amended, claims 10-19 have been canceled without prejudice, and new claims 20-26 have been added to further define the inventions. No new matter has been introduced by virtue of the claim amendments.

Withdrawal of Finality

Applicants gratefully acknowledge the Examiner's withdrawal of the previous premature Final Office Action.

Elections/Restrictions

Although Applicants respectfully disagree with the previous Restriction Requirement, claims 10-19 have been canceled without prejudice in view of the finality of the restriction. Applicants need not address the Examiner's supporting assertions (set forth on pages 2-7 of the Office Action) regarding the Restriction Requirement, as the record in this action speaks for itself as to the validity of the restriction. Applicants traverse the restriction requirement and maintain that the restriction requirement is improper for all previous reasons provided by Applicants. Applicants reserve their right to file a petition to challenge the restriction requirement, if desired.

Claim Rejections

Claims 1-3, and 5-8 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Herz et al. (hereinafter "Herz"). Although Applicants respectfully disagree with the rejections for at least those reasons provided in previous responses, the claims have been amended to more particularly define the claimed subject matter and further clarify the distinctions of the claimed subject matter over the current art of record.

At the very least, claims 1 and 5 are not anticipated by Herz. Although Herz generally discloses systems and methods for determining customized prices for on-line shopping, the claimed inventions are fundamentally distinct from Herz. In general, Herz discloses systems and methods in which customized prices and promotions are automatically determined by accumulating and updating consumer profile data for a plurality of consumers (on-line shoppers) and using the consumer profiles to price and promote goods and services in ways that are tailored to individual consumers. The consumer profile data includes information regarding consumer demographics, shopping history and behavior, interests in products/services, etc. (see, e.g., paragraphs [0004-0005]. The Herz methods allows for “customization, down to the level of the single individual based on “click streams” (the sequence of keys pressed on a computer) or purchase histories of that individual.” (see, last sentence of para [003] and paragraph [0261])

Herz expressly distinguishes method which merely set a retail price for a particular product/service from Herz’s methods of processing consumer profile data so as to make customized offers for a given product to individual consumers or groups of similar consumers, in which the given product is advertised and priced differently for different consumers or groups of consumers. (see, e.g., paragraphs [0003] and [0237].

In this regard, Herz differs from, and teaches opposite to, the claimed inventions, which are generally directed to systems and methods for dynamically setting a current retail price for a product (goods, services, digital content, etc.) according to rules that *specify conditions and parameters to determine the retail price of the product (or the retail charge) and to determine when to change the retail price (or the retail charge) and an amount of change in retail price(or the retail charge) of the product based on the retail*

sales state information of the product and current retail sales status information of the product, as essentially recited in claims 1 and 5, for example. Indeed, Herz does not teach methods for setting a current retail price for a product as claimed – Herz teaches method making offers to individual consumers based on consumer profile data. Herz does not teach setting a retail process of a product according to rules that specify conditions and parameters to *determine when to change the retail price* (or the retail charge) *and an amount of change in retail price*(or the retail charge) *of the product based on the retail sales state information and current retail sales status information of the product*. Instead, Herz teaches a method for selecting offers that are likely to result in profitable sales based on methods for predicting which offers a given consumer would be likely to accept (see paragraph. [0037]).

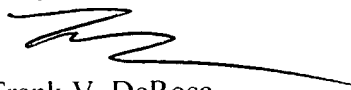
For at least the above reasons, it is submitted that claims 1 and 5 are patentably distinct and patentable over Herz. Moreover, each claim depending from claims 1 and 5 is patentably distinct and patentable over Herz at least by virtue of their dependence from respective base claims 1 and 5. In addition, the dependent claims are patentable over Herz in their own right.

For instance, Herz does not reach trend information provision means for generating, in accordance with said current retail sales status information of a product, trend information concerning trends affecting changes to a current retail price of the product, wherein the trend information is product information that is furnished to the user in response to said information request, as recited in claim 2, for example. Indeed, as demonstrated with respect to the exemplary embodiments of FIGs. 12 and 13 of Applicants' specification, the claimed invention advantageously allows a consumer

wishing to purchase a given product to determine market trends affecting changes to the retail price of the given product. Herz does not appear to teach or suggest methods for presenting trend information to a consumer regarding trends affecting changes to a current retail price of the product.

Accordingly, for at least the above reasons, withdrawal of the rejections is requested.

Respectfully submitted,



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